**C.R.No.168/06**

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. CIVIL REVISION PETITION NO.168/2006

Madhukar Shyam Chaturvedi

Vs.

University of Rajasthan

DATE OF ORDER :: 13/11/2006

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. Ashok Gaur, for petitioner
Mr. A.K. Sharma, for respondent

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Instant revision petition has been filed questioning the order of the learned First Appellate Court dated 5th October, 2006 whereby the application for temporary injunction has been rejected.

Counsel for respondent, Shri Sharma has raised objection that the present issue relates to refusal of temporary injunction application in the suit which is still pending before the learned trial Judge and which is yet to be adjudicated on merits and in view of amendment made u/s.115 CPC, the present revision petition is not maintainable.

Counsel for petitioner, Shri Gaur on the other hand, tried to convince this court that in view of judgment of apex court in **Shiv Shakti Coop. Housing Society Vs. Swaraj Developers [(2003) 6 SCC 659]**, the revision petition is maintainable. Since looking to the nature of relief, which the petitioner has

prayed for in view of being refused to him the remedy lies only in the proceedings referred to u/s.115 CPC.

In my opinion, the application for temporary injunction alone has been refused by the learned First Appellate Court and the suit is still pending for adjudication and in view of amendment made u/s.115 CPC, the revision petition in the present facts and circumstances is not maintainable and the judgment in **Shiv Shakti Coop. Housing Society Vs. Swaraj Developers** [supra] is of no assistance to the counsel for petitioner.

Mr. Gaur further submits that in view of judgment in **Col. Anil Kak Vs. Municipal Corporation [(2005) 12 SCC 734]**, the present revision petition be treated as writ petition which has been seriously opposed by Mr. Sharma, counsel for respondent.

With the above observations, the present revision petition stands disposed of.

However, in the interest of justice, I consider it proper that the present revision petition be treated to be a writ petition.

Office is directed to register this revision petition as writ petition and list before Regular Bench hearing writ petitions in the next week.

**[AJAY RASTOGI],J.**

FRBOHRA,JR.P.A.